

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

MDS CONSTRUCTION CORPORATION  
and GINO SQUARCIAFICO  
Respondents

Case Nos.: I-00-11001  
I-00-11050

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701, *et seq.*) and Title 21, Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11001) served on December 11, 2000, the Government charged Respondents MDS Construction Corp. (“MDS”) and Gino Squarciafico with violating 21 DCMR 502.1 by allegedly failing to obtain a building permit before engaging in any earth movement or land disturbing activity that requires an approved erosion and sedimentation plan.<sup>1</sup> The Notice of

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<sup>1</sup> 21 DCMR 502.1 provides: “No person may engage in any land disturbing activity on any property within the District until that person has secured a building permit from the District. Approval of a building permit shall be conditioned upon submission by the permit applicant of an erosion and sedimentation plan which has been reviewed and approved by the Department.”

Infraction alleges that Respondents violated 21 DCMR 502.1 on December 7, 2000 at 4839 Indian Lane, NW, and seeks a fine of \$500.00.

Respondents failed to file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code §§ 6-2712(e), 6-2715). Accordingly, this administrative court issued an order on January 25, 2001 finding Respondents in default, assessing a penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-2712(f).

The Government then served a second Notice of Infraction (No. 00-11050) on January 30, 2001. Respondents failed to answer the second Notice of Infraction within the allotted time. Accordingly, on March 19, 2001, this administrative court issued a Final Notice of Default, finding Respondents in default for failure to answer the second Notice of Infraction, assessing an additional \$500.00 penalty pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B). Pursuant to D.C. Code § 6-2713, and setting an *ex parte* proof hearing for April 19, 2001, at which Respondents could elect to appear to contest liabilities, fines, penalties, or fees in accordance with applicable law.

In accordance with the requirements of the March 19 order, the Government submitted three exhibits in support of the Notices of Infraction prior to the April 18, 2001 hearing. These exhibits were offered and received into evidence at the hearing. *See* Petitioner's Exhibits 100-

102 (“PX-100, PX-101, PX-102”). The charging inspector appeared at the hearing on behalf of the Government. Respondents did not appear at the hearing, nor did they submit any evidence.

## **II. Findings of Fact**

Based upon direct observation of the testimony of the inspector, which this administrative court finds to be credible, the exhibits submitted by the Government and the entire record in this case, this administrative court makes the following findings:

1. On December 7, 2000, Respondent MDS operated a construction site at 4839 Indian Lane, N.W. Respondent Gino Squarciafico was employed by Respondent MDS as superintendent for that site.
2. On December 7, 2000, the charging inspector came to the 4839 Indian Lane, N.W. site and asked for Respondents’ building permit. At that time, the charging inspector had noticed large piles of soil and other debris deposited around the site, including soil and other debris deposited on the public street abutting the site near a storm drain. PX-100; PX-101; PX-102.
3. Respondents did not have a building permit for the 4839 Indian Lane, N.W. site on December 7, 2000.
4. Respondent Gino Squarciafico confirmed to the charging inspector that Respondents’ business mailing address is 8 Nicols Court, West Harrison, NY, 10604-1114.

5. On December 11, 2000, the Government certified that it personally served the first Notices of Infraction (No. 00-11001) upon Respondents. Respondent Gino Squarciafico indicated receipt of the first Notice of Infraction by executing it at the bottom. On January 30, 2001, the Government certified that it served by certified mail the second Notice of Infraction (No. 00-11050) upon Respondents at 8 Nicols Court, West Harrison, NY 10604. The Government did not offer into the record a return-receipt for its service of the second Notice of Infraction.
6. On January 26, 2001 this administrative court served the January 25, 2001 first default order upon Respondents by U.S. Mail/Delivery Confirmation at the 8 Nicols Court address. The United States Postal Service (“U.S.P.S.”) delivery confirmation indicates that the item was delivered at 4:36 P.M. on January 29, 2001. On March 20, 2001 this administrative court served the March 19, 2001 final default order upon Respondents by U.S. Mail/Delivery Confirmation at the 8 Nicols Court address. The U.S.P.S. delivery confirmation indicates that the item was delivered at 10:20 A.M. on March 21, 2001.
7. Respondents have provided no explanation for their failure to respond to the first and second Notices of Infraction.

### **III. Conclusions of Law**

1. As a preliminary matter, Respondents had sufficient notice of the charges in this case as mandated both by the Due Process Clause and the Civil Infractions Act of 1985. The Government’s personal service of the first Notice of Infraction upon Respondent

- Gino Squarciafico, as well as the Government's service of the second Notice of Infraction by mail and this administrative court's service of its orders by mail to Respondents' last known home or business address, *i.e.*, 8 Nicols Court, West Harrison, N.Y., constitutes sufficient notice.<sup>2</sup> *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985); D.C. Code § 6-2715.
2. On December 7, 2000, Respondents were engaged in land disturbing activity at the 4839 Indian Lane, N.W. site without a building permit.<sup>3</sup> Accordingly, Respondents violated 21 DCMR 502.1 on December 7, 2000. *See* 16 DCMR 3201.4 (infraction committed by individual acting as agent, partner, director, officer or employee of a person shall be considered to have been committed by that person). A fine of \$500.00 is authorized for this violation. Respondents have not sought a reduction or

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<sup>2</sup> Respondent Gino Squarciafico has, without objection on the part of Respondent MDS, held himself out to have actual or apparent authority to bind Respondent MDS for purposes of this adjudication. *See Insurance Management, Inc. v. Eno & Howard Plumbing Corp.*, 348 A.2d 310, 312 (D.C. 1975); *DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I-00-10439 (Final Order, April 18, 2001); *DOH v. JV Trucking, Inc.*, OAH No. I-00-10445/10467 (Final Order, March 2, 2001). Accordingly, I conclude that, under these facts, personal service upon Respondent Gino Squarciafico of the first Notice of Infraction was sufficient service for Respondent MDS. *Cf.* D.C. Code § 13-334(b) (service upon in-District-based employee of foreign corporation transacting business in the District permissible when action relates to, among other things, contracts to be performed in the District).

<sup>3</sup> 21 DCMR 599.1 defines "land disturbing activity" as "any earth movement or land change which may result in soil erosion from water or wind and the movement of sediments . . . including, but not limited to, stripping, grading excavating, transporting and filling of land, construction or demolition of buildings or structures." As this administrative court has previously decided, depositing piles of soil about a site as occurred in this case constitutes "land disturbing activity." *DOH v. Sheriff Mews LLC*, No. I-00-10009, OAH Final Order (September 8, 2000).

suspension of the fine. Accordingly, Respondents are liable for the full \$500.00 fine.  
16 DCMR 3234.1(a).

3. As to the penalty, pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, the respondent shall be liable for a penalty equal to the applicable fine. D.C. Code § 6-2704(a)(2)(A). If a respondent similarly fails to answer the second Notice of Infraction, the penalty doubles. D.C. Code § 6-2704(a)(2)(B).
4. Respondents have not established good cause for their failure to answer both the first and second Notices of Infraction in this case. Accordingly, Respondents are liable for the statutory penalties in the amount of \$1,000.00. D.C. Code §§ 6-2704(a)(2)(A), 6-2704(a)(2)(B).

#### **IV. Order**

Therefore, upon the entire record in this case, it is hereby this \_\_\_\_\_ day \_\_\_\_\_, 2001.

**ORDERED**, that Respondents shall jointly pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715); and it is further

**ORDERED**, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on any property owned by Respondents that may be found in the District of Columbia pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/      **8/17/01**

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Mark D. Poindexter  
Administrative Judge